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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of

**Implementation of the
Telecommunications Act of 1996:
Telecommunications Carriers' Use of
Customer Proprietary Network
Information and
Other Customer Information**

CC Docket No. 96-115

DOCKET FILE COPY ORIGINAL

**INITIAL COMMENTS OF
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

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June 11, 1996

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Pursuant to the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, 47 C.F.R. §§ 1.49, 1.415, and 1.419 (1995), the National Association of Regulatory Utility Commissioners ("NARUC")¹ respectfully files these comments addressing the May 16, 1996 adopted "Notice of Proposed Rulemaking" ("*NPRM*") released in the above captioned proceeding May 17, 1996 [FCC 96-221].

1 NARUC is a quasi-governmental nonprofit organization founded in 1889. Members include the public service commissions from all fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. These commissions are charged with regulating, inter alia, communications common carriers operating within their respective borders. In that capacity, they must assure that those services and facilities required by the public convenience and necessity are established. NARUC also nominates state commission members to the Federal-State Joint Boards as specified in § 410 and § 254 of the Communications Act. NARUC actively represents the interests of its membership both in Joint Board proceedings and other FCC dockets impacting state regulatory initiatives. NARUC also collaborates with the FCC's Common Carrier Bureau (CCB) in matters of common interest. See, 47 C.F.R. § 0.91 (c), which states that one of the "functions" of the CCB is to "[c]ollaborate with representatives of state...commissions and with the National Association of Regulatory Utility Commissioners in cooperative studies of common carrier and related matters."

I. BACKGROUND

Section 702 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. §§ 151 et seq., added new Section 222, which sets forth, among other things, restrictions on the use of CPNI obtained by telecommunications carriers in providing telecommunications service to customers as well as certain requirements related to the availability of subscriber list information. In addition, the 1996 Act establishes a new Section 275(d) that prohibits local exchange carriers (LECs) from using information obtained from calls made to alarm monitoring service providers to market their own alarm monitoring services, or those provided by any other entity, and requires the Commission to adopt implementing regulations within six months. In this *NPRM*, the FCC proposes a rules to ensure that telecommunications carriers comply with their new statutory obligations to maintain the privacy of CPNI and other customer information.

II. DISCUSSION

NARUC has not had an opportunity to directly consider this *NPRM* as it did not issue until after our March 1996 Winter meetings. However, previous resolutions, passed at the March 1994 and February 1991 meetings are relevant to the inquiry undertaken in this docket. Copies of these three resolutions have been attached as Appendix A.

Prior written authorization rules should be utilized.

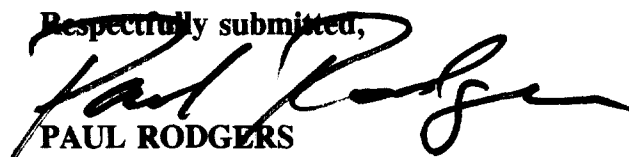
NARUC agrees that the impact of competition and the introduction of new technologies and services on consumer privacy rights must be evaluated. In ¶ 27 and elsewhere in the *NPRM*, the FCC asks comment on what methods carriers may use to obtain customer authorization for use of CPNI in compliance with the Statute.


In previous comments, citing the fact that some State regulators have seen evidence of abuse by utilities when confronted with the question of prior written notification and approval, NARUC has advocated the FCC adopt procedures for obtaining prior written authorization from all customers prior to release of any CPNI by utilities. Accordingly, NARUC generally agrees with the ¶ 29 acknowledgments that "[w]ritten authorization provides greater protection to both customers and the carrier than oral authorization, in that the former advises customers in writing of their CPNI rights and provides the carrier with evidence that it has obtained customer approval..." and that "[f]rom a consumer protection standpoint, written notification, which is more specific and verifiable than oral notification, may be preferable."

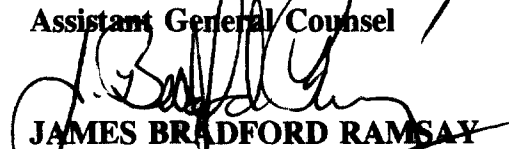
III. CONCLUSION

NARUC respectfully requests that the FCC examine and give effect to these comments.

Respectfully submitted,


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CHARLES D. GRAY
Assistant General Counsel


JAMES BRADFORD RAMSAY
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APPENDIX

NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONER'S

MARCH 1994 RESOLUTION
Regarding HR 3432 "Telephone Consumer Privacy Protection Act of 1993"

FEBRUARY 1991 RESOLUTION

Resolution Concerning the FCC's Notice of Proposed
Rulemaking and Order in CC Docket 90-623 Concerning the Remand of
Computer III Issues

Resolution
Regarding H.R. 3432, "Telephone Consumer Privacy Protection Act of 1993"

WHEREAS, On November 3, 1993, Congressman Ed Markey (D-MA) the Chairman of the House Energy and Commerce Subcommittee on Telecommunications and Finance introduced H.R. 3432, the "Telephone Consumer Privacy Protection Act of 1993"; and

WHEREAS, The bill has been assigned to the Committee on Energy and Commerce-Subcommittee on Telecommunications and Finance for review and markup; and

WHEREAS, Title I: Privacy of Customers Proprietary Network Information (CPNI) of the proposed legislation defines CPNI as information relating to the quantity, destination, type of phone calls, frequency of calls, and other; and

WHEREAS, Title I: Privacy of Customers Proprietary Network Information of the proposed legislation prohibits a local exchange carrier from disclosing customer proprietary information to anyone, including an affiliate or subsidiary of the telephone company, unless required by law or by customer request; requires that the FCC be notified to the availability of aggregate or compiled CPNI whenever it is made available to an affiliate and that information must be made available to unaffiliated service providers on the same basis; and

WHEREAS, Title II of the proposed legislation mandates that the FCC tariff Caller ID services within 180 days of the enactment to include free per call blocking; and

WHEREAS, Title II.C provides that common carriers provide ANI services under tariff and contract with consumer protection requirements for use and disclosure of ANI; and

WHEREAS, Title III: Access to Telephone Records of the proposed legislation requires carriers to notify customers when the carrier divulges or publishes a subscriber's billing information or the content of subscribers' communications when the carrier provides this information pursuant to a subpoena issued by a court of competent jurisdiction or on demand of other lawful authority; and

WHEREAS, The prevention and detection of toll fraud requires that carriers be able to promptly cooperate with law enforcement officials by providing them with necessary customer information, which could include "subscriber information" and "customer proprietary network information" as those terms are defined in the Bill, in cases of suspected toll fraud; and

WHEREAS, It is not clear whether carriers' divulgence of this information in compliance with the request of law enforcement officials, in the absence of a subpoena, would be permitted under the Bill; and

WHEREAS, After reviewing this proposed legislation, the NARUC has a concern with regard to Title I. First, the restrictions on disclosure of CPNI only apply to local exchange carriers, while nothing is said about interexchange carriers, electric utilities, gas companies, cable companies, alternative access service providers, and resellers or any other service provider who could collect and sell CPNI. Second, the legislation would permit the FCC to exempt local exchange carriers that do not have 1,000,000 aggregate nationwide lines if the FCC determines that such an exemption is in the public interest or if compliance with the requirements would impose an undue economic burden on the carrier; and

WHEREAS, NARUC's General Counsel and Office of Congressional Relations has sent correspondence encouraging State commissions to contact their house members and express their thoughts on this bill; now, therefore, be it

RESOLVED, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), convened at its 1994 Winter Meetings in Washington, D.C., believes all carriers that can compile CPNI should be subject to all the privacy restrictions of this legislation and that no exemption should be given for carriers with less than 1,000,000 aggregate subscribers; and be it further

RESOLVED, NARUC supports a clarification to the Bill to confirm that carriers may release subscriber information and customer proprietary network information upon request of law enforcement officials conducting a toll fraud investigation; and be it further

RESOLVED, That the legislation should be amended to allow individual States the right to determine the tariff provisions for the offering of Caller ID services within their borders; and be it further

RESOLVED, That NARUC generally supports the ANI provisions included in the bill as drafted; and be it further

RESOLVED, That State commissions should follow the suggestion of NARUC General Counsel to contact their House members and express their thoughts on this bill.

**Resolution Concerning the FCC's Notice of Proposed
Rulemaking and Order in CC Docket 90-623 Concerning the Remand of
Computer III Issues**

WHEREAS, The Federal Communications Commission ("FCC") has issued a Notice of Proposed Rulemaking and Order ("NPRM") in CC Docket No. 90-623 regarding the remand of Computer III issues by the Ninth Circuit Court of Appeals, and

WHEREAS, The FCC has requested comments on proposals to: 1) strengthen non-structural safeguards involved in the provision of unregulated enhanced services by regulated telephone companies, 2) reevaluate safeguards on Customer Proprietary Network Information ("CPNI"), and 3) preempt State regulations differing from Federal safeguards that would thwart or impede Federal policy, and

WHEREAS, Comments to the FCC's NPRM are due on March 8, with Reply Comments due by April 8, 1991, and

WHEREAS, Many State regulatory agencies have serious concerns about the ability to control cross-subsidization of enhanced services through the use of non-structural safeguards, and

WHEREAS, Evidence exists that some regulated telephone utilities have acted in abuse of existing non-structural safeguards designed to prevent cross-subsidization between regulated and unregulated portions of the industry, and

WHEREAS, Some State regulators have seen evidence of abuse by utilities when confronted with the question of prior written notification and approval, which has implications for the provision of CPNI, and

WHEREAS, State regulators have significant and critical concerns about the FCC's proposal to preempt State policies which necessarily thwart and impede Federal policies relating to the provision of enhanced services; now, therefore, be it

RESOLVED, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), convened at its Winter Committee Meeting in Washington, D.C., directs its General Counsel to file comments in response to the FCC's NPRM, and be it further

RESOLVED, That such comments support the concept of individual State discretion with respect to the adoption of structural safeguards for the provision of intrastate enhanced services by regulated utilities, and be it further

RESOLVED, That such comments encourage States and the FCC to adopt procedures for obtaining prior written authorization from all customers prior to release of CPNI by regulated utilities, and be it further

RESOLVED, That such comments support the concept of cooperation among State and Federal regulators on the issue of Open Network Architecture and the provision of enhanced services, and that the preemption of State policies be rejected as contrary to law and good public policy for the provision of enhanced services; and be it further

RESOLVED, That independent of the FCC's decision to adopt structural safeguards versus non-structural safeguards, the FCC should, in its final order within its lawful authority, impose conditions that will assure that State regulatory agencies have full access to all books and records of all companies affiliated with the local exchange companies for the purpose of reviewing transactions dealing with enhanced services.

Adopted February 27, 1991

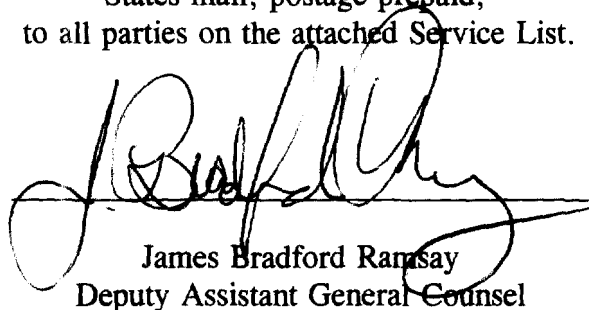
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CERTIFICATE OF SERVICE

I, JAMES BRADFORD RAMSAY, certify that a copy of the foregoing was sent by first class United States mail, postage prepaid, to all parties on the attached Service List.



James Bradford Ramsay
Deputy Assistant General Counsel

National Association of
Regulatory Utility Commissioners

June 11, 1996